



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 185 OF 2011

IN THE MATTER OF THE ESTATE OF WILLIAM WAWERU NJOROGE (DECEASED)

VERONICA WANJIKU.....OBJECTOR

VERSUS

ROSEMARY WANJIKU KIHURA.....ADMINISTRATOR

JANE WANJIRU WAWERU.....ADMINISTRATOR

RULING

1. This ruling disposes the application for confirmation of the Grant of the Estate of William Waweru Njoroge, the deceased herein. The application was filed by the Administrators and brought by way of summons dated 18th February, 2020 supported by an affidavit jointly sworn by the Administrators on even date. One Catherine Wacuka Waweru has duly consented to both the confirmation of grant and mode of distribution as evinced by a copy of Consent annexed to the supporting affidavit.

2. The deceased herein died intestate on 25th July, 2009. A Grant of letters of administration Intestate of the deceased's estate was issued to Rosemary Wanjiku Kihura and Jane Wanjiru Waweru, the Administrators, on 25th May, 2012. Later on 29th September, 2016 the Objector Veronica Wanjiku filed an application for revocation of grant on the grounds that it had been obtained fraudulently by making of false statements and concealment of material facts, and specifically that despite being named as a wife and dependant of the deceased, she had not been notified of the petition for a Grant. The application was however dismissed since the record showed that the Administrators had duly notified the Objector prior to petitioning for the Grant of Probate. The Court then directed the parties to file an application for confirmation of the Grant and include the Objector in the mode of distribution. Consequently, the Administrators filed the instant summons for confirmation of grant.

3. In the affidavit filed in support of the summons for confirmation of grant, the Administrators deposed that the deceased was survived by four (4) dependants and that the deceased's estate comprised solely of "Terminal & Employment Benefits held at the Royal Netherlands Embassy". It is proposed that the 1st Administrator Rosemary Wanjiku Kihura, obtains 95 per centum of the Benefits, for herself and in trust for the 2nd Administrator Jane Wanjiru Waweru and one Catherine Wacuka Waweru, whilst the Objector Veronica Wanjiku obtains 5 per centum of the shares.

4. Notably, the assets comprising the Estate of the deceased as stated in the summons for confirmation of Grant are at variance with those stated at the time of Petitioning of Grant.

5. At the time of Petitioning for the Grant, the Administrators told the court that the deceased had four (4) dependants:

- a. Rosemary Wanjiku Kihura – 1st Wife
- b. Veronica Wanjiku Maganjo – 2nd Wife
- c. Jane Wanjiku Waweru – Daughter
- d. Catherine Wachuka Waweru - Daughter

Further that the deceased had no liabilities and that the full inventory of the assets of the deceased at the time of his death were of an estimated value of Kshs. 4,000,000/- and comprised of:

- a. Terminal and Employment Benefits with The Royal Netherlands Embassy.
- b. Shares with FINNLEM Sacco Society.
- c. Pension.
- d. Bank account at Barclays Bank of Kenya Limited.

6. It is therefore strange that the Administrators failed to include the other assets in the list of assets despite confirming in their joint affidavit that they have not embarked on the distribution of the estate. It did not help that the parties herein also elected not to file submissions in respect of the summons for Confirmation of Grant. The Administrators opted to rely on their supporting affidavit while the Objector opted to leave the determination to the Court. It is however apparent from the record that throughout these proceedings, there has been consensus that the estate comprises of four (4) assets. This only changed when the summons for confirmation of Grant was filed.

7. The above notwithstanding, I will proceed to determine how the Estate of the deceased ought to be shared amongst the beneficiaries of his Estate. By dint of the fact that the deceased has been stated to have been polygamous, the applicable law is **Part V** of the **Law of Succession Act** which stipulates the law on Intestacy. The relevant section under that part is **section 40(1)** which provides that:

“Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”

8. In the instant case, the deceased had two (2) wives. The 1st Administrator Rosemary Wanjiku Kihura was the first wife while the Objector Veronica Wanjiru Maganjo was the second wife. The first house has two children, the 2nd Administrator Jane Wanjiru Waweru and Catherine Wacuka Waweru, while the second house has no children. It therefore follows that the Estate of the deceased is comprised of four (4) units, three (3) in the first house and one (1) in the second house. The deceased’s net intestate estate ought therefore to be divided into four units in the first instance. This would mean that the First House would be entitled to three-quarters of the Estate and the Second House to one-quarter of the estate. This would, in percentage, translate to 75 per centum to the First House and 25 per centum to the Second House. Thereafter, the distribution would proceed under **section 35** for the First House and under **section 36** for the Second House.

9. Whilst the Administrators sought to have the estate distributed in a 95 per centum and 5 per centum share, they did not give any explanation for this proposal. To distribute the Estate of the deceased in such a manner, in the absence of any such explanation, would offend the provisions of the **Law of Succession Act** and in particular **section 40(1)**.

10. In view of the foregoing, I hereby allow the application for confirmation of grant filed via summons dated 18th February, 2020 with the following orders:

- a. The Grant of Letters of Administration Intestate of all the Estate of William Waweru Njoroge (deceased) issued to Rosemary Wanjiku Kihura and Jane Wanjiru Waweru on 25th May, 2012 be and is hereby confirmed.
- b. The assets comprising the Estate of the deceased include a Bank account with Barclays Bank, Terminal and Employment Benefits with the Royal Netherlands Embassy Including pension and Shares with FINNLEM SACCO.
- c. The net value of the assets in (b) above shall be distributed as follows:
 - i. 75 per centum to Rosemary Wanjiku Kihura for herself and her children Jane Wanjiru Waweru and Catherine Wacuka Waweru;
 - ii. 25 per centum to Veronica Wanjiku.
- d. The Administrators shall complete the administration of the Estate of the deceased within six (6) months of the date of this ruling and render a full and accurate account of the complete administration in accordance with **section 83(g)** of the **Law of Succession Act**.
- e. There shall be no orders as to Costs.

It is so ordered.

DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 25TH DAY OF JANUARY, 2022

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L. A. ACHODE
HIGH COURT JUDGE

In the presence ofAdvocate for the Objector.

In the presence of.....Advocate for the Administrators.